IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 774 of 1985

with

CRIMINAL APPEAL No 775 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MOHANBHAI DHANABHAI

Appearance:

1. Criminal Appeal No. 774 of 1985
MR MA BUKHARI, APP for Appellant
NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5

2. Criminal AppealNo 775 of 1985
MR MA BUKHARI, APP, for Appellant
MR RN SHAH for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 18/06/1999

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

Both these appeals arise out of a common judgment and order of acquittal in relation to a common incident. Upon request, they are being disposed of simultaneously.

Two Sessions Cases were tried and adjudicated upon by the learned Sessions Judge, Valsad, Navsari. Sessions Case No.2/85 was against four accused out of five accused persons whereas separate Sessions Case No.17/85 was committed against original accused No.5, Ramesh Dhana, as initially, chargesheet was not submitted against him by the Investigating Officer apprehending that he was a juvenile. Subsequently, it was found that respondent No.5, herein - original accused No.5 - minor Ramesh was not a juvenile. Therefore, supplementary chargesheet was submitted which gave rise to Sessions Case No.17/85. That is how both the Sessions Cases came to be tried, entertained and disposed of simultaneously, by the Trial Court.

For the sake of convenience and brevity, the respondents herein, who are the original accused persons, are referred as they were arraigned before the Trial Court. Accused Nos.1, 2, 3 and 5 are four brothers amongst six and accused No.4 was the neighbour. The prosecution case has been that in village Talavchora of Chikhli taluka in Valsad District, accused persons and the complainant Dhirubhai and Narsibhai and his brothers Babubhai and Dilipbhai and Bipinbhai were residing, at the relevant time. In that village, a pond known as Malkashiya was taken on lease by public auction for fishing purpose before the incident occurred.

On 5.10.84 at about 7.45, the brother of the complainant Babubhai and Dilipbhai went to keep a watch over the said pond followed by complainant and his brother injured Bipin on motorcycle. At that time, all the accused persons were present near the said pond and accused No.1 Mohan was found catching fish from the said pond leased by the complainant party. The complainant had told the accused party not to proceed with fishing work from the said pond, as a result of which accused persons got enraged and attacked the complainant party. Accused No.1 Mohan was allegedly armed with axe and inflicted one blow on the head of deceased Babu, whereas, accused No.2 Shankar was armed with axe and stone and inflicted blows on the persons of injured Bipin. Accused No.3 was armed with stick and he allegedly injured Dilip, whereas, accused No.4 Uttam inflicted stone blows on Dilip.

Accused No.5 Ramesh was allegedly armed with stick and inflicted blows on the head of injured Dilip Patel.

It was further alleged by the prosecution that accused persons had formed unlawful assembly with the common object of committing murder of deceased Babubhai and causing injuries to injured Dilip. The accused persons were tried by the Trial Court for the offences punishable under section 143, 147, 148, 337, 149, 323, 302 and 149 of the Indian Penal Code and separately under section 302 of the IPC. The defence of the accused was of total denial. In order to substantiate the charges levelled against the accused, the prosecution led oral as well as documentary evidence.

Upon assessment and examination of evidence, the Trial Court acquitted all the accused persons of the charges against them by giving benefit of doubt by the impugned judgment of acquittal recorded on 24.4.85 in Sessions Case No.2/85 and 17/85. Thus, the Trial Court found that the accused persons are not guilty and responsible for the murder of Babubhai and original accused Nos.2 and 4 are not responsible for the injuries caused to complainant Dhirubhai and his brother Bipin. Hence, this appeal at the instance of the State.

After having heard and considering the evidence on record, we are of the opinion that the view recorded by the Trial Court in passing the impugned acquittal judgment could not be said to be unjust, unreasonable or perverse. No doubt, the prosecution had successfully established that the deceased Babubhai died a homicidal death, in the light of the evidence on record. However, the prosecution has failed to prove beyond reasonable doubt the involvement of the accused persons. The Trial Court has given weighty reasons for passing the impugned acquittal order. It has also elaborately considered the major contradictions in the evidence of eye witnesses.

It will be surprising to note that even the evidence of the complainant, injured prosecution witness No.2 Dhirubhai, at Ex.19, is not clear and consistent. His evidence is also not supported fully by prosecution witness No.3, his brother injured Dilip examined at Ex.21. Both these witnesses, though, are related have not successfully reinforced the prosecution version and that is the reason why the Trial Court has observed that there are serious infirmities and material contradictions in their evidence. Ordinarily, injured eye witnesses would not stand benefitted in, falsely, involving other persons and also, ordinarily, the Court would be at

loath to discard the evidence of such witnesses. However, the Trial Court has not placed reliance on the testimony for the reasons that their evidence is not only conflicting, but inconsistent and incoherent. Prosecution witness No.6, Savitaben, at Ex.29 has turned hostile to the prosecution case. Obviously, therefore, her evidence is of no avail to the prosecution. The evidence of injured is also contradicted to an extent by the medical evidence of Dr.Bhagwati Prasad, at Ex.43. He had also examined the injured persons and conducted the autopsy. Serious inconsistencies and material contradictions between the evidence of the Medical Officer and the eye witnesses have been succinctly brought out by the Trial Court in minute detail.

It will be also very interesting to note that the brother of the deceased, Bipin Patel has not been examined and the prosecution has not been able to adduce any satisfactory account for non-examination of the said witness. When the eye witnesses account is full of contradictions on the main theme of the prosecution, the evidence of Bipin Patel, brother of the accused, would have been very material. Out of five accused persons, no explanation is adduced as to why names of only two persons, accused No.2 and 4 were mentioned in the FIR and not the names of others. No doubt, it happens at times and for some reasons, some times some names are not disclosed or recorded in the F.I.R. When injured eye-witness happens to be the first informant had no reasons for not disclosing the names of accused No.3 & 5 or if he had any there is no material on record as to why he did not mention these names in FIR.

It would be also very material to note, at this juncture, that the prosecution had not taken care to seize the bloodstained clothes of injured witnesses. No explanation is also noticed or spelt out from the record as to why the clothes of the injured persons Dhiru and Bipin were not collected and seized by the Police during the course of investigation. It will be also interesting to note that the FIR also did not disclose that injured persons as such sustained injuries. The discovery panchnama relied on by the prosecution is also not proved in terms of law. The discovery panchnama under section 27 produced at Ex.40 sought to be proved in the evidence PW 7, Ranchhdbhai, Ex.39, in reality, does not take the prosecution case any further.

Before concluding, needless to reiterate that when the appellate court, broadly, agrees with the reasons assigned by the Trial Court and the ultimate conclusion

reached by it, it need not deal with and reiterate the same meticulously. Therefore, it would not be necessary for us to consider other grounds threadbare. It is also a settled proposition of law that ordinarily, the Appellate Court would be at loath to interfere with the acquittal judgment and order recorded by the Trial Court, if the view taken by the Trail Court appears to be plausible. In other words, merely because a better view can be taken by the appellate Court upon appraisal of the evidence is no ground for setting aside the acquittal recorded by the Trial Court. In short, the main anxiety of the appellate Court is always to see whether the impugned acquittal judgment and order is in any way totally unjust, unreasonable, perverse or that it could not have been reached by a reasonable person upon assessment of the evidence. So is not the factual scenario in the present case and in the result, the appeal needs to be dismissed.

Consequently, both the appeals are dismissed. Bail bond of the accused shall stand cancelled.

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(vjn)